

Readings in Hancock.



The Litchfield  
Historical  
Society.

2072

1916-43-5

*Of Pleadings  
in  
Chancery.*



1870

1871

1872

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Of Pleadings in Chancery

Of the manner in which suits in Chancery  
are instituted and conducted

In case in Chancery is commenced on behalf of a subject by  
procuring a bill in name of a petitioner to the Chancellor  
as to the King, if the Chancellor is a judge. Stat. 27. 4. c. 20

In case the petition is to the King, it is made by the  
"Petitioner" as in Stat. 27. 4. c. 20

If the suit in Chancery is in behalf of the crown the complaint is  
called an information, exhibited by the King's Counsel or Solicitor General  
Stat. 7. 22. c. 1. Stat. 27. 4. c. 20. Stat. 27. 4. c. 20.

And by Stat. in Information usually called "Bill" and the word  
"Bill" seems to be used, in general usage, even in the King's Chancery.  
Stat. 7. 22. c. 1. Stat. 27. 4. c. 20.

Every bill must be founded on one or more of the grounds of jurisdiction  
jurisdiction. And jurisdiction in such cases extends to a decision  
of the subject in controversy. Stat. 8. 32. 357.

## Of Pleadings in Chancery.

in some, it is only auxiliary to the decision of another court, or a future suit. 1 Nil. 8. 32. 32. 139. 149. 121. 160.  
 In the former, relief is prayed; in the latter, not.  
 In some cases also, when there is no actual injury, provisional relief may be granted against a threatened wrong  
 Nil. 8. Bro. Ch. 331. 1 Ark. 234.

And in Eng. the High Ct. of Ch. has cognizance of bills for the removal of suits from inferior equitable jurisdictions to itself by writ of certiorari. 1 Nil. 8. 9. Not so here.

Every bill except that for a certiorari requires an answer by the def. This is in writing and becomes a part of the court roll, called here the record Nil. 4. 224.

In Eng. the answer is sworn to, except when a fraud, or corporation aggrieved is set up. In the first case a plea is made upon the honor of def.; in the last under the corporation seal. Nil. 9. —

9  
C) Proceedings in Chancery

The office proposed in carrying on business, and to supply  
the bills with long and to succeed what the bills were, and  
the a route of the office — under the seal of the office in  
a decree, the manner required is to certify the decree —  
11th 4. 11.

The office being except for a petition, the office must make reference  
in some way, and the office must be set right to the office in  
reference — and the office must make reference, and the office must  
in some way, and the office must be set right to the office in  
reference — 11th 10. 11. 17. 8.

The office must be set right to the office in reference — and the office must  
make reference, and the office must be set right to the office in  
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be set right to the office in reference — and the office must  
make reference, and the office must be set right to the office in  
reference — 11th 10. 11. 17. 8.

# Of Pleadings in Chancery

In other cases, it is not sufficient, to make any other answer, than that the allegations in the bill are not true, and even this is seldom used (1 Vent 284) the hearing is usually, as we express it, at large, when the question is not demanded to.

The law may proceed, with a particular answer, in cases, and that except where a hearing is sought, the court will not ever allow it to be given in any suit. (Hollman v. Chichey, N. H. R. - 1 Vent, 281.)

In cases where the bill is not a bill in equity, but a bill in law, the answer is to be made by the defendant, and not by the plaintiff, as in the case of a bill in equity. —



# Of Pleadings in Chancery -

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The plaintiff in equity before prayer to amend a bill -  
may amend only to the right party, not to the cause  
some to the defendant only and some to both - an amendment  
in equity may be made. J. Feb 11. 12. 1702. 148.

1<sup>st</sup> The answer may be amended - 1. On matter of form, as the bill  
is more defect in it. In which case the answer is by amendment  
Feb 12. 14. 149.

2<sup>nd</sup> On matter of substance as not being in reply to the  
bill, without a formal amendment with Feb 12. 149. In  
this case the answer is called a plea (Feb 12. 149) - The plea is  
confined to one point or ground of answer, - Feb 12. 149.  
Feb 12. 149. of amended answer - Feb 12. 149.

3<sup>rd</sup> On matter in the bill, & the matter offered in the answer  
as the Judgment is to be given on the whole case as disclosed  
on both sides. In this case the answer is termed an answer.  
Feb 12. 149.

# Of Pleadings in Chancery

Can this mode of defence may be used in one case, if applied, respecting to different and distinct parts of the bill. — See 12. 14. 15.

... the purpose of defending it all, by disclaiming all interest in the matter in question. — The proceeding is termed a disclaimer. See 14.

1. An answer avoids the allegations contained in and a plea avoids it, if in favor of the defendant or not to the entire, or to some part of it, as the demurrer or objection. — See 14. 15. — Particular defence —

If the demurrer is averted, the plea may make a new defence. This may be done by plea, answer — demurrer is extensive; and not by a demurrer of the same extent. See 16. 17. — Demurrer is not an answer, the same is an answer and is not an answer. —

2. The plea avoids for the purpose of bringing in new matters, all the allegations which it does not deny. *Att. 10. 128. 2 vol. 51.*

But a denial in the affirmance of the plea, is not a positive & if in favor of the plea, may operate as the truth of it by a re-  
plication & then also an issue is put upon it. *Att. 15. In this  
case the replication does the pleading. Att. 15. —*

3. The plea is averred, i. e. proven upon the plea, and  
may make a re-  
plication in answer to it, and is not plea  
*Att. 17. — This is a re-  
plication in answer to it. Att. 17. —*

4. The re-  
plication avoids the plea, and is not a part  
of it — and states the facts to show the truth of it in the  
subject of the case. *Att. 15. —*



When the suit is not to remove a suit from a lower jurisdiction  
there is no defence - and if removed no pleading beyond the Bill  
Pl. 17. - p. 1. 2.

Of the manner in which suits in Ch<sup>c</sup> are instituted and  
concluded.

When the Bill itself is defective, or the suit in its original form  
proves inadequate to its object. by reason of intervening accidents,  
as often happens - a new suit may become necessary to add to,  
continue, or pro or affirmat, the original suit, Tit. 18. -

When a suit ~~commenced~~ by one, may require a suit by another  
necessary either for the purpose of defense, or of a full decision on  
the rights of all parties - a judgment rendered may in some cases  
be suspended or avoided by a second suit - or a second suit  
may be necessary to give effect to a former judgment - Tit. 18.

## Of Pleadings in Chancery-

Suits for any of these purposes are commenced by Bill - Hence arise many of the Divisions under which, the different kinds of Bills are classed. §. 18.

Some new defects in the draught of a Bill are generally rectified or supplied either by amendment, or a supplemental Bill §. 18. 579. - Some in the answer, by amendment or by further answer. §. 19. -

By and ag<sup>t</sup> whom a Bill may be exhibited?

Regularly, all persons and bodies politic may exhibit Bills in Ch. - this in England, allowing, communication, attainder, &c. on to a certain extent, disqualifications. §. 20.

But Infants, Idiot, Insane, and Lunatics cannot sue in Ch. by Bill - §. 20. 155, 156.

Of Readings in Chancery -

1. An Infant in Eng<sup>d</sup> sees in Ch<sup>c</sup> by his next friend - Tho' the Court will permit any person to commence a suit in the name of an Infant. Mit 26. 1. Ch. 376. 1. Ch. 378. and the consent of the infant is not necessary. Mit 28. 24. Wheeler & Bishop L. 6. L<sup>d</sup> 68 -

• Tho' next friend is liable for the costs. Mit. 20. Ch. 715. 2. Ch. 68. 238  
2. P. 11. 297 -

Tho' if the infant attains 21. & then remains in a suit, there is no change made in the costs but he is liable for the whole costs. Mit 26. Ch. 708 -

Neither the next friend, nor his wife, can act in the suit - but being interested in the event, so far as regards the costs. Tho' if it be necessary his name may, upon application to the court be added, and that of another immediately. Mit 26. 3. Ch. 511. Stam. 708.

Tho' the costs cannot be paid by the infant - yet if it be ascertained to the court that the costs is not for his benefit; the court by order of its officers, will enquire into the fact - & if the representation is found true, the proceedings will be stay'd. Mit. 27. 3. Ch. 140.

## Of Pleadings in Chancery

1. So, while we are married, if the same person be two next friends, the C<sup>ourt</sup> will require, which is most for the benefit - & stay for proceedings in the affair. Mit. 27 -

In Chancery, if one in Chancery as at law by guardia or next friend.

2. Next in Chancery in form of next next are regularly substituted by husband and next friend. Mit. 27, 28 -

But when she claims a right in opposition to her husband, she will be not in her name by her next friend - But a Bill in such case cannot be drawn, without her consent. Mit. 28 & Res. 452. Res. 63, 37

If her husband is deceased, or has been in the interim & she may sue alone. Mit. 28



3. Pleas & Demurs, see in Eng<sup>d</sup> by the Committee of the States  
i. e. to examine the validity of the persons and estates & com-  
mitted by the Committee - Stat. 28. 3 C. 11. 106. 1 C. 11. 277-

That the Committee have in some instances, relaxed enforcement of  
their duty being concerned in order to procure protection of  
the country - Stat. 28. 4 C. 11. 106. 1 C. 11. 277-

In Eng<sup>d</sup> they are by their constitutors, appointed by the court  
of Com. Pl., Stat. 28. 4 C. 11. 106. 1 C. 11. 277-

Wills in Ch<sup>ancery</sup> may be exhibited against persons and corporations  
Stat. 29.

When test against a joint contract, the testimony must agree  
to be made a party - except in the case of his benefitment, as in Stat.  
Stat. 27. 95. 96. 3 C. 11. 478. 2 C. 11. 104. 610. - 2 C. 11. 104. 610. 2 C. 11. 104. 610. 2 C. 11. 104. 610.  
to him or discharge his debt; who may appear in aid  
to defend as usually. Stat. 30. 2 C. 11. 55. - 3 C. 11. 104. 610.  
in a suit and make his deft - as in Stat. Stat. 30. 2 C. 11. 55. - 3 C. 11. 104. 610.

## Of Pleadings in Chancery.

4. If he is without the jurisdiction, or cannot be found, 2 Vern 513  
 (See in bk. 228.) In all these cases she defends as, perme sold  
 Mit. 90.

When an idiot or lunatic is sued, the Com<sup>rs</sup> of his estate  
 must be made a party (deft.) in Eng<sup>l</sup>. - his conservator  
 in Cont. Mit. 29. 94. 5. St. Cont. 233. - The committee is  
 appointed by the court of chancery, guardian for the purpose  
 If he has no committee, or the committee has an opposite  
 interest court appoints guardian ad litem. 2 Bacc. 500.  
 Str. 359. Mit. 94. - If deft is by age or infirmitie re-  
 duced to second infancy Mit. 94. Pre. Ch. 409. -

generally distinct and separate claims in different persons  
 standing in the same relative situation cannot be joined  
 in one suit. - Ex. Land contracted to be sold in parcels  
 to several, they cannot join in a bill for specific redemption.  
 1 East 227. 497. -

### Of the several kinds of Wills.

Wills are divided into three kinds.

I. Original Wills - These relate to some matter, not before  
 decided in the court, by the same parties, standing in the  
 same int<sup>s</sup>. Mit. 2. Kinds 17. -

II. Wills not original - which are either in answer to, or continuance  
 of an original Will, or both. - Mit. 31. 50.

III Bills in the nature of original bills - These are Bills occasioned by some former bill, & the object of them is to obtain the benefit of some former suit or judgment, or as an appeal of some former decision. Nit. 31. 32. & 36.

These are not, strictly, original bills, because they relate to matters that have been litigated. - So subsequent bills are not original, because they relate to a continuation of some original, <sup>but</sup> such a bill is not an original relief -

I. Original - These are divided into bills praying relief - & bills not praying relief. Nit. 32.

An original bill praying relief, may be,

I. A Bill, praying the decree of the court, respecting some right claimed by the party in opposition to some right claimed by another. Nit. 32. -

## Of Pleadings in Chancery

2. A Bill of interpleader - i.e. Bill claiming our right, in opposition to the rights claimed by others - but still preserving a decree touching the rights of the debts, for the safety of the plaintiff -  
 Mit. 32. 40. 8. 125. Hinde 26. -

III. A Bill, praying for a writ of certiorari, to remove a cause from an inferior jurisdiction. Mit. 33. 29. Hinde 28.

Original and passing relief among lay persons -

1. Writs to perpetuate the testimony of witnesses. Mit. 33. 50. 130.
2. Writs for discovery of facts, resting in the knowledge of the defendant, or of deeds, writings &c. in his custody or power.  
 Mit. 33. 52. 130. 148. Hinde 32.

2. Bills not original. There are 2 kinds.

1. Supplemental bills. A bill of this kind is merely an addition to the original bill. Art 50. Sec 577.

2. Bills of review - a bill of this kind is a continuance of the orig<sup>d</sup> bill when by reason of the death of a party, or the marriage of a feme sole, the suit in its original form cannot proceed -

3. Of Revivor & Supplement. A bill of this kind both continues the original suit and supplies defects arising since its institution. Art 33 -

3. Bills in the nature of original bills - Of these the distinctions are numerous: -

I. A cross-bill, introduced by the opp. pt. the facts or the parties touching some matter in litigation. Art 70. II. A bill of review to examine and reverse a decree upon a former bill. Art 80

III. A bill in nature of a bill of review - but by no means introduced by the former decree. Art 80.

III. To impeach a decree, on the ground of fraud. Art 84.

V. To execute a decree, and facial renewals, or to renew it for reasons arising subsequent to it. Art 80.

VI. To carry a decree into execution. Art 80.

VII. In nature of a bill of review - it lies in relation cases which do not admit of a continuance of the original bill. Art 60 80.

VIII. In nature of a supplemental bill. Art 57 80. Art 54 5 -

Of the structure and end  
of the several kinds of Bills

1. Original. 2. not original. 3. in the nature of original. (but not)

1. Of original bills: the consideration of them will in a great measure involve the consideration of bills in general.

I. Those foraying relief - II. those not foraying relief.

First - Original bills foraying the record of the court are always some right claimed by the pett. in opposition, to some right claimed by def. must show the right or record of the pett. - the nature of the enquiry; or in what he needs the assistance of the court. - and that he is without adequate remedy at law. Tit. 37. 40. 1. Sect. 578.

In Eng. the bill always forays, when the def. may answer in law with the several matters charged. Tit. 37. 43.

In C. the pett. are not foray an answer by def. except in bills for discovery, of which part, and in cases in which he is willing to rely upon def. evidence - and in these cases he must state, that he cannot obtain the evidence. In this way, he may foray for discovery only, or for discovery and relief as in Eng. and he may foray a discovery as to part of the bill only and become the rest by his own Law evidence. 1. Sect. 578.

The prayer for an account is that the aff. may be examined, only according to his knowledge, but according to his remembrance, information and belief - and to prevent evasion, he may insert specific interrogatories, respecting some material fact alleged. Mt. 40. 4. -

The bill then prays for relief, the nature of which is various according to the nature of the case. Mt. 37. 38. 40. -

The usual mode is to pray for the particular relief, to which the plff. thinks himself entitled, and then to add by way of conclusion a general prayer of his relief, as the case may require. Mt. 28. 7. 10.  
2 Nott. 91. 2. 1 N. & C. 578. -

As the prayer of particular relief may be granted with a double effect - i. e. it may ask for this or that relief in the alternative as the court may judge proper. Mt. 37. 2. 46. 525.

But it seems, that a prayer of general relief is, of itself, sufficient, and that the court may under such a prayer, except the relief to the case. *Mt. 88. 9. 2 Ark 3. 141. 3 Ark. 152. 2 Nev. 225. 1 Tit. 578.*

Lastly. The Bill in *Equity* prays that a writ of subpoena may issue to require the defendant to appear and answer *Mt. 5. 8.* This is no part of the bill in *Common Pleas* is annexed to and joins with the bill. It is in form a summons, or citation to appear. Leaving it optional with him except where a discovery is prayed for) to appear and show cause <sup>if</sup> or not - and is signed by a second magistrate, an ordinary common law process is.

All persons concerned in the demand or who may be affected by the relief prayed, might to be made parties if within the jurisdiction. *Br. Ch. 88. 2 Ark 5. 10.* But if necessary parties are omitted or unnecessarily inserted the court will in general permit the proper alterations to be made. *Mt. 39.* —



Practice in Eng<sup>l</sup> is to charge a combination of persons with others unknown to plaintiff for the formation of adding other names if necessary, but this seems an unnecessary form. Mit. 40.

In Comm' when it is conceded, that others ought to be added, as above, the court in general will on motion, continue the cause, that they may be cited.

Whatever is essential to the suit and necessarily within plaintiff's knowledge should be alleged, positively and with certainty, as material facts at law should be. Mit. 40. 1. 1 Wils. 56.

Scarcely as to facts, charged to exist in plaintiff's knowledge, or which if they exist, must be within his knowledge, and which are the subject of part of the discovery passage - No positive allegation not necessary in these cases - Mit. 41.

In practice it is necessary, for the purpose of presenting a motion as part of practice that the court should make a provisional order before the merits are decided & an injunction to restrain defendant from proceeding at law from answering matters Mit. 45. Afterwards discovered or made perpetual -

In such cases it is usual to insert in the bill, before the prayer of process, a prayer for the special order to be required and then the bill is commonly named from the order or writ so prayed as an injunction bill &c. Stat. 16.

Provisional injunctions to stay proceedings at law, and interim, I believe, in Court. The court of law will continue the suit as long as is necessary, in vacation.

Every bill in Eng.<sup>d</sup> is signed by counsel, and if it contain matter original, immaterial or scandalous, it shall be expunged, and the counsel must pay costs to the party aggrieved. But nothing scandalous is considered scandalous. Stat. 17. 1 Ch. Stat. 194. 21 c. 24. Amds 394.

See also in Connecticut —

Secondly Bill of interpleader - In these the plaintiff claims no right, in opposition to any rights, claimed by others.

This bill is the proper remedy of a person, holding property or being subject to a duty, claimed adversely by two or more persons. he not knowing to whom of the claimants he ought to render it. Mt. 33. 47. s. 12. s. 13. Md. 305. 1. Cr. Ca. 80. 2. Ch. 173. 1. 1797.

Under these circumstances, he may exhibit a bill of interpleader against the claimants, praying that they may enter judgment, so that he may not be liable to whom the thing belongs, and that he may be discharged. Mt. 33. 2. Cr. Ca. 86. 1797.

And if a suit at law is already commenced against him, by either of the claimants, he should also pray, that the plaintiff at law may be restrained from proceeding, till the right is determined. Mt. 48.

The plaintiff in the bill should state his own rights and the several claims, to show that equitable interposition is necessary. Mt. 48.

The bill does not extend to ordinary cases of Writings,  
as the parties, in those cases may be supposed to enter  
pleas at law. Stat. 48. u.

As the ground of the writ is the danger of the party being  
deprived, the court will not permit the proceedings to be  
used obliquely, to give an advantage to either party -  
or to delay the payment of money due from the party.  
Stat. 48.

It is upon the party most answer to the bill an affidavit, that  
there is no objection - and if money is due from him,  
he must bring it into court, or at least offer so his will,  
to do it. Stat. 49. 2 Inst. 200.

Thirdly - Commons bills - praying a writ of that  
name, to remove a cause from an inferior equitable  
jurisdiction - No subpoena may be made appearance  
by aff - or pleading beyond the bill. Stat. 49. 50.  
The bill states merely the proceedings below - the  
incompetency of the court and prays the writ. Stat. 49. -  
This part of original bills praying relief - D

2. Of original bills not praying relief. Viz

1. Bills to perpetuate the testimony of witnesses.

2. Bills of discovery.

1<sup>st</sup> A bill to perpetuate etc. must state the matter, to which the testimony is to apply, and show that plaintiff has an interest in the subject. *Mit. 50. Finch's Ch. 391. 1 West 277.*

It should also show an interest in the debt, to which plaintiff's bill - scire, no need of the evidence? *Mit. 51.*

It should show that the facts, to which the testimony will relate cannot immediately be investigated in a court of law, as if plaintiff in the undisturbed possession of the subject, or that before an investigation can be had, some material witness is likely to die or depart the realm (state). *Mit. 51. 1 C. Mid. 117. 3 B. 77. 1 B. Ch. 530. Hinde 32.*

The bill then prays leave to examine the witness, that their testimony may be perpetuated and perpetuate. *Mit. 51.*

The deposition generally taken by commissioners appointed by the court for that purpose. *Hinde 32. 101. 2.*

Secondly — A Bill of discovery

In Eng<sup>l</sup> law, bill, requiring an answer to a bill of discovery  
or at least to give a discovery. M. 52.

But the Bill, distinguished by this title, is one laid for  
the discovery of facts existing in the knowledge of a party  
or of deeds, writings &c. in his custody or power, & seeking  
no relief. F. 52. Vide 36.

This bill is commonly used, in aid of the jurisdiction of  
some other court which cannot compel a discovery — Ex.  
to enable the party to prosecute or defend in a suit at law.  
M. 52. 1 Ch. 288. 1 Ven. 205. 2 Rev. 451.

The bill must state the subject of the discovery — the interest  
of the party and state in the evidence and the party ought to a  
discovery. M. 52. Vide 36. &c.

When a bill reaches a committee of law it prays such relief as might be obtained at law if they were in possession. He must assure an affidavit, that they are not included in it and that he knows not where to send it in legal hands. Mt. 82. Words 56.7. - Learn. When discovery only is sought 1. Code 24. 2. C. W. 34. 3. Mt. 122.

2d. I am official receiver in Court in the former case. I suppose not. Learn is - L. C. -

II. Bill not original - viz Legislational - 2 of review - 3 of review and amendment - Mt. 82. 8. -

now are in addition to a continuance of an original bill, or both

Remarks. A bill, imperfect in its form, may generally be perfected by amendment - But when the title of the proceedings prohibits an amendment, a new bill (not orig.) is necessary. Mt. 82.

So, a suit, originally perfect, may become defective; by subsequent events - or, by change of interests. death of parties - In these cases also, a new bill may be accepted.  
Mit. 59. 4. Hinde 42. 3.

Thus, if the interest of a party in the subject of the suit becomes vested in another pending the suit; the suit in its original form, generally becomes defective. Mit. 55. Hinde 42. 2.

And if such change of interest is occasioned by the death of a party whose interest is not an asset by death or by the marriage of a female both the suit becomes, in part or whole discontinued. Mit. 55 - And if the party dying, or female marrying, is party the whole proceedings are in general discontinued. P. - 1. 1. 1. Hinde 40.

Upon the death of a defendant, the proceedings are as to him and his interest - But the marriage of a female do not discontinue the proceedings. Mit. 55. 4 Ven 147. 1 Com. 318. 1 Lec. 182. Should be named in the subsequent proceedings. - But if the interest of a party dying terminates absolutely, so as no longer to affect the suit, it does not abate. Mit. 57. - Ex. Death of test. for life



So if the interest of the party dying, survives to another -  
 Ex. one of two or <sup>3</sup> - So if husband dies being a joint  
 party with his wife, in her right } *Tit. 56.2 Com. 247.*  
 3 alk. 720.

Tho' if on the death of an husband, he and his wife being  
 joint, she does not proceed in the cause, it will be  
 considered as abated - and she not liable for the costs  
*Tit. 57.*

After a demand in a bill of interdict, there is generally an assess  
 of the suit as to help - and the death does not discontinue  
 it. *Tit. 57. 1 Com. 381.*

It is a general rule, that if plene right, in the subject of  
 the suit, is transmitted to another, pending the cause,  
 the latter may substit depon in it, if assess, and  
continue it if abated. *Tit. 58.*

And if plene right in the subject be transmitted to the  
 plaintiff may prosec or continue it against the person to  
 whom de de de.

The means of supplying defects, & continuing are  
 1. By Supplemental Bill —  
 In the imperfection of a bill arises from a neglect in  
 the original bill, or the proceedings upon it, and not  
 from any subsequent event, it may be perfected by  
 (an addition in) a supplemental bill. Ex. See the  
 necessary process — see matter put in House practice  
 noted — where the state of the business will not allow  
 of amendment. Mil. 57. 3 Ark 570. & Ch. Hep. 142 —

And this may be done, as well after a waiver, as before.  
 Mil. 57. 3 Ark 133. 110. 217.

This bill is never allowed, where the end can be obtained  
 by amendment. Mil. 60.

This bill also supplies defects, occasioned by omissions  
 subsequent — ex. By alteration in the interest of a party,  
 or a new interest in one not a party &c. Mil. 60.  
 1 Ark. 291. 3 Ark. 217.

If the interest of a sole feoff. being in another's deceit determines by death &c. and another becomes entitled to it, it may be added to & continued by supplemental bill. Ex. Death or removal of assignee of h<sup>is</sup> feoff. Stat. 61. 1. 12th 88. 89. 3. 16. 218. See in Ch. 170. 2. 11th 237. 2. Cy. law. lib. 3. 4. In case the question of title in the feoff. is not varied & merits the same

But if a sole feoff. being in his own right, is deprived of or parts with his interest in the subject perpetually, the benefit of the suit cannot be obtained by supplemental bill but by one in nature of it — Ex. feoff. becomes tenant in part, or sells his feoff. Stat. 62. Com. 11. 389.

The reason is, that here the question of feoff. title is entirely merits different — Ex. a new original bill may issue. Stat. 62.

So, if the entire interest of a feoff. is determined and the subject vested in another, not claiming under the former, the benefit of the suit not obtained by supplemental bill. Ex. land in last feoff. dies — and reversioner vests — Bill lies not against reversioner man — but one in value of it. Stat. 62. 10. 67. 87.

Reason, that interest and titles are distinct — new merits — new judgment matters. — new party not bound by former act —

Law, If after interest is not allowed retained, but merely vested in another. Ex. If he alien or devise - then debtor is not affected and will continue by supplemental bill - See the provisions is subject to the same equity, as grantor - and will may not there be defeated by after. Nit. 65. 1 Alb. 87.

## 2. Title of survivor -

When a will is abated by death and the interest of the deceased party is transmitted to his representative, as ascertained by law - or that the person may, and not the title of the representative is to be ascertained by Ch. 9. See continued by bill of revision. Nit 65. 1. 1 Red 577. -

So if a will is abated by marriage of a female with. Nit. 64. The question of title is the same as before -

## 3<sup>d</sup>. Bills of revision and supplement.

If when a will is abated by death or otherwise, the rights of the parties are affected by one thing only, as by a supplement of the interest - a bill of revision and supplement is necessary to bring the will perfectly before the court. Nit 53. 5.

Supplemental bill not suffi. because the will requires to be revised,  
 i. e. revised) & that is ad idem - and a bill of revision only  
 is not sufficient; because the will requires addition, as well  
 as well as revision - The bill under consideration is a  
 bill of 6th - Hil. 55, 79.

4<sup>th</sup> If the death of a party, whose interest is not determined,  
 is attended with such a transmission of the interest, that the  
 title to it may be delegated - Ch. 3. neither of the three former  
 bills will give the claimant the benefit of the will - it will  
 in nature of a will of revised. Hil. 55, 78. - The Bill of  
 real estate of Henley. 44. 1 Ch. 3. 150. 3. Hil. 56, 39. - (152) -  
 1 Eq. law Act. 2. 1 Hen. 4. 27. 2. Hil. 54, 57. 2. 1 Hen. 3. 6. 529.

5<sup>th</sup> If the interest of a party, wholly over, and the same is not  
made in another, is clearing under him; neither of these bills  
 will answer - but are in nature of a supplemental bill. Hil. 57  
 62. 89. - The Bill in real estate, concerning real estate and conveyances  
terminus etc - 2 Eq. law Act. 3. 1 Hen. 3. 6. 520. 435 (152)

(Of the structure of  
Bills not original.)

Supplemental - This must state the original bill - the  
 for occasions when it and (if revised by any court  
 subsequent) it must state the court, and the subsequent  
alteration in the act - And in general it prays in law  
 (not in conscience generally) that the act or acts may appear  
and remain - Tit. 67. s. 217. Titus 43. s. 1. Mod. 377.

If the court subsequent works an alteration in the interest  
 of a part or of a person necessary to be made sett the bill  
 may be rehearsal and the person alone, without the other  
part - and may pray a decree when the supplemental  
matter, not him alone - and if the interest of the other  
 may be affected by it. Tit. 70. s. 217.

And where the bill is filed for the mere purpose of bringing  
new parties before the court or acts - the original defendants  
may be made parties to it. Tit. 70. s. 217.

2. Bill of revivor - This must state the original bill - the  
 proceedings upon it - and the abatement by death & it must  
 show a right to revive the cause the cause, and pray that  
 it may be revived. Mil. 70. Wende 48. 3 P. W. 248. 1 Kent 57

And it may be necessary to pray an assessd. Mil. 70. 1. 70

The object of this bill is to put the suit in the situation in  
 which it stood, at the time of the abatement, and to enable  
 the plaintiff to proceed in it. Mil. 72. 3.

Not a revivor, if in the original suit any bill of revivor  
 of the defendant party does not. - For then the rights of the parties  
 are not restored, and both are restored to the benefit of the time.  
Mil. 70. P. in Ch. 177. 1 Eq. Cas. 2. 3 (166 69). 2 Wren. 295

In this case the bill must be substantive, the suit - but it must  
 bring before the court, all the parties necessary, for their benefit.  
Mil. 70. 1 Eq. Cas. No. 2.

A bill of revivor, may be filed to put out of the subject  
 matter, so as to put by one bill, and as to the other, by another.  
 It restores the rights of the bill, not at his death, partly in  
 law real, and partly in his personal representative. P. W. 248  
1 Eq. Cas. No. 1. - Wende 48. com -

3 or Bill of rescuer and supplement, being merely a  
 compound of the two former kinds is framed & proceeded  
 with in its separate parts, according to those res.  
particulars. Art. 74.

III. Bills in the nature of original. of 8 kinds. Art. 74

1 Cross-bills - Bills by left in a former bill pending ag<sup>t</sup>  
pltt or other parties, touching the matter in question  
 under the former. Art. 75.

Usually used to obtain a discovery or full relief to all  
 parties. Art. 75.

It may be laid by one or more defts ag<sup>t</sup> pltt & other  
defts. This is necessary if a question arises between  
 different defts. for the purpose of bringing the whole  
 matter before the court together. Art. 75.



It is clear that the original Writ in provision is not the same the rights of the party exhibiting it: i.e. the grounds on which it is founded. Mil. 75. 6.

It is in the nature of a defence as it precludes the possibility of a complete determination of the matters already in question. Mil. 76. 3 Ark 812. 11. d. 160.

There when after issue joined, a new ground of defence occurs, (or is returned) a reple-bill may be necessary to take advantage of it. Mil. 76. 7. 3 Ch. Prob. 19.

So when a bill, in its original form, cannot settle the rights of all the parties; or when several are in opposite interests a reple-bill by one or more of them is the regular mode of bringing all the rights of all the parties to a decision. Mil. 77. 2 Ch. Cas. 248. 3 Ark 110. 1 Root 577.

2. Bill of review - bill to renew an examination and renewal of a decree upon a former bill signed and rolled. Mil. 78. -

May be bill upon error apparent on the face, or upon the merits of new matter. Mil. 78. 1 Ch. Cas. 24. 1 Root 282. 10. Ark 292. 5. 11. 771.

then that where success of any matter, at any time, in  
the first and only an application for a new trial at  
law (1 How 579). when upon in the affidavit, a writ  
of error.

But in error in the fact of the crime is appea-  
rent on the record a writ of error is the proper remedy  
But does he mean then, that a Writ of error is not  
proper in a case of 1 How 579, an appeal  
is Dem. Exc. Sec. in error in the fact of the crime is Eng. L. But will  
the Writ there is proper. 1 How 416, 418—

It lies in Eng. L. after an affidavit in Dem. Exc. Sec. —  
But if the alleged error is affirmed. 1 How 416, 418.

If on a writ of error, a claim has been reversed,  
a new bill of error may be had on the ground  
of error. 1 How 417.

In Eng. a lapse of twenty years from the date of passing the decree, is a bar to the bill - and after a demand has been allowed, to one bill of review, and new one cannot be filed on same ground. Mit. 79, 207.  
 1 Bro. P. C. 78. 3 Id. 463. 6 Id. 273. 1 Term. 133. 417. 441.  
 2 Id. 120.

It is a rule of the court in Eng. that the bringing of the bill shall not prevent the execution of the decree - and if money has been decreed to be paid, it is regularly, to be paid before the bill is filed. Mit. 80. 2 Bro. P. C. 27 -

This bill states the former bill. The proceedings - the decree - the point in which judg. is erroneous - and the error, or new matter discovered. Mit. 80. 2 Ch. 2. p. 110. 411. 441.

If the original decree has not been carried into execution, it is sufficient for a reversal - If it has, judg. should not bring to be reversed - the situation in which is Mit. 80. 1 -

To render this bill negotiable, the debt should have been incurred before that the prosecution is in file - and the same may be covered by a species of supplemental bill. Mit. 80. 2. 2 Pl. 40. 3 Pl. 81 -

Of the structure and end of  
the several kinds of Wills continued.

5<sup>th</sup> Of Wills in the nature of Gifts of residue, but by one  
not bound by the former decree. As where the  
decree was not a person, having no interest - or not  
such interest, we could make the decree binding upon  
another claiming the same as an immediate interest.  
M. 34. 88. 1 Ch. Ca. 272.

6<sup>th</sup> Or Decree not limited for life, affecting the rights  
of remainder man in land or in fee - The latter may  
have this bill - It must show the error in the decree  
the incompetency of the former party (or term for life),  
to sustain the will - his own interest - and procure  
a review, and affirmance, and reversal by the opposite  
party. M. 34. -

7<sup>th</sup> To impeach a decree for fraud - In these cases the  
court will restore the parties to their former situation.  
M. 34. 2 C. 11. 70. 3 Fe. 111. 1 Broo P. C. 414. -

It lies not only in cases of direct fraud, but in others,  
but in others having the same operation. Ex. when a decree  
is made not binding, the estate goes to the party not being a  
party, and the estate not restored, and in similar cases.  
M. 34. 6. 1 Ch. Ca. 131. 2. 3 Ch. Ca. 92.

to be in aid where an interlocutory decree has been made  
wrt. an infant. Nil. 85. 1 Ch. R. 757. 2 Ven. 232 -

The bill must state the decree and previous proceedings  
and the circumstances of fact &c. Nil. 85 -

It is refused a decree, where special circumstances, or reasons  
it for smaller relief, or where the decree of final decree  
judgment has been procured, by negligence, fraud, or  
omission at the trial - The court may set aside it, and make  
a new decree where the smaller relief is entitled. Nil. 85. 1 Ch. R.  
61. 2. 250. 2 B. 8.

5. To carry a decree into execution Nil. 85. where from the  
negligence of parties, or other cause, the benefit of it cannot  
be obtained without a further decree.

This happens generally where the parties having neglected to  
enforce it, their rights become so embarrassed, or to  
obtain a new decree to settle them and in some other cases.  
Nil. 85. 2 Ch. R. 6. 128. 2 Ven 409 -

Bill of review, to be taken by a court in a particular case (a party  
to the cause. Nit. 80. 7. 1. Ch. 201. 2. 4. 17. 197. 4. 180. P. 1. 162.

The court generally will refuse and does not see the  
error - but it is said, that the error of a decree might  
not be examined, on this bill. Nit. 87. 2. 180. 232.  
Ch. 201. 2. 4. 17. 197. 4. 180. P. 1. 162.

In order of a bill of review. - It is said is certain  
cases in which after abatement or remedy bill of review  
will not continue the suit - E. where the interest of  
a party dying is so transmitted; that the title  
may be delegated in ab. 2. or in case of a devise  
of the estate - Grant of legal privilege between  
them for a remedy by bill of review. Nit. 88-9.  
In such case benefit of the original suit is obtained  
by this bill. Nit. 88. 66. 89. 2. 180. 584. 672. P. 1. 162.  
2. 180. P. 1. 162.

In order the original bill and proceedings - the  
abatement - the transmission of the interest - and  
the validity of both bills. Nit. 88. -



Of the nature of the  
several kinds of Defence?

Defence is made by Demur - plea - or answer.  
M. 27. 13. 14.

And all these may be waived, if they relate  
specifically to distinct points of the bill - M. 13.  
4. 48.

I. Demur.

The demur is a waiver of the verdict of jury alleged,  
but demands judgment. Whether he shall be compelled  
to answer. M. 14. 13. 27. 29. & C. W. 80. 370.

The principal object of a demur is to avoid  
a verdict - to avoid a defective bill - i.e. I  
suppose to prevent an investigation of it, or to  
save expense. M. 100.

It may be performed to a bill and plea in joint  
if a demur - will hold the rest will not quod  
will, M. 101. See answer. M. 100. C. W. 80. 13. M. 101.



1. Of Demurrer to original bill - see under this  
 head - 1. of demurrer to bill which is generally in two  
 instances to demurrer) 2. to demurrer which sometimes  
 consequentially gives the relief - Act 101

Then the demurrer sought is only granted by the court  
 if a demurrer to the bill will cause the bill  
to be dismissed - But if the demurrer has a further effect  
 before may be granted to it, but he has no claim to  
 relief - Act 100, 148, 11, 12 -

1. Of Demurrer to relief -

That the subject is not within the jurisdiction of the  
 court is a good ground of demurrer. Act 100, and 101

That if the bill has an adequate remedy at law  
 and the remedy is clear and certain, a demurrer will  
 not be granted - Act 111, 2, 3, 118, 10 & 119, 2 & 120, 2 Act 100  
 1. Act 146

But when an affidavit, or exact bill is necessary  
in Eng<sup>d</sup> to give jurisdiction to the court, the want  
of it is a good ground of removal. - *Tit. 112, 120, 176, 305*  
*248.*

It will hold if bill have adequate remedy  
in any court of ordinary jurisdiction or otherwise  
in Eng<sup>d</sup>. - *jurisdiction had. Tit. 114.*

In a great variety of the instances the jurisdiction  
may be defective and in all these, regularly a  
removal will hold. *Tit. 115, 182.*

If another court of Equity has the proper  
jurisdiction of the bill, it may seem to the  
jurisdiction. *Tit. 134, 135, 184, 185, 265-4.*

Ex. Bill in the Subj. Court - jurisdiction in the  
Chancery - But we do not usually seem  
to the jurisdiction - the court will dismiss it, or  
the hearing. So in Eng<sup>d</sup> in some cases -  
*Tit. 133.*

Personal disability (in prob. of appointment in the will)  
 is a ground of removal. - Ex. of pure will (in  
 ordinary cases) is not valid - Infant without assent  
Ex. 22 without assent. - Tit. 135. -

But if the disability does not appear in the will,  
 it must be taken if it be provd. - Tit. 135.

This doctrine extends as well to title for necessity  
 as to title for relief. - Tit. 38.

That prob. has no interest in the subject - is not able  
to invalidate the will in a ground of removal. - -  
Ex. prob. vidimus under a will from the construction  
of which, it is apparent, that he has no title - So  
tho' he may have an interest - but no right to over  
or one claiming under former will for removal  
Tit. 130, 7. 2 Tit. 210. 2 Tit. 247. Re in Ch. 139. 3 P. 11 31.  
Cont. 28 2 Tit. 35. Ex. 73 -

This Statute also extends to Wills for discovery.  
Stat. 135-9. 1 Hen 105. 1 Eq. Cas. 234-

So that the claim is not subject to the Statute. To suppose legal  
and. The Statute also extends to wills to a bill  
for discovery - or for relief. Stat. 139. 140. Finch 75. 1 Hen. 5.

But if the will state a complete bill, this a litigata,  
and, a remitter will not hold as to the discovery  
Ex. Carni succ. pending a will, to repeal the  
administration. Stat. 140. 1 Vern. 106. 3 P. W. 372

This the will have an interest and a right to sue, not  
for want of privity between him and the will.  
The latter may not be liable to the will. If so, dem.  
habeo. Ex. A Legatee has no right to call on  
testator's debts, for the satisfaction of his legacy -  
Stat. 141. 2 Atk. 394. -

This distinction between the personal representative  
and the will's might afford a distinct ground  
of equity, on which to claim relief - Stat 141 -

Bill must also show some claim of debt, or def - or else  
 the latter may demand. Thus, if in a bill to set aside  
 an award, or enforce one, the arbitrators are made defts,  
 they may demand and in general not only to the relief,  
 but to the discovery. Mit. 142. 2 Ep. Ca. 75. 2 Pl. 380  
1 Pl. 180.

Sho' it seeme, that a bill is to be to enforce an award  
 for gross misconduct in arbitrators; they may be made  
 defts. Mit. 142. 2 Alb. 395. 304. 2 Pl. 315. 317.

If a bondsmen is made deft. in a bill w<sup>ch</sup> his affidavit;  
 he may demand to the relief. Having no into. But it seeme,  
 that if a discovery is sought; of his acts before bondsmen;  
 he must move to that part praying the discovery.  
Mit. 142.

If by reason of any defect in the substance of the award  
 as disclosed by the bill, the bill is not entitled to relief,  
 the defts may demand. Mit. 144.

The want of proper parties, is a sufficient ground  
 of dismissal. Ex one joint tenant plff. - husband  
 suing alone p. a leggee given to his wife. Nil. 144. 5  
Re. Ch. 572. 1 Ch. ca. 41 - Finch 4. 10. s. 202 -  
3 L. W. 311. 531. 2 alk. 51. 1 alk. 290

It is the object of the act to do complete justice,  
 by calling in the rights of all persons interested in the  
act - for the purpose of the act is not to prevent  
litigation. Nil. 144 -

But a part of the act is the act of a dec.  
person may sustain a bill, in behalf of themselves  
 and the act, for an act of the act and prayer.  
 But in this case, the act may come in under  
 the act. Nil. 146. 2 Re. 512. 513. Re. Ch. 572.

If a sufficient record be made, a necessary  
party is suggested by the bill, a decree  
will not hold. Ex if he is resident out  
 of the jurisdiction of the act. Nil. 146. Re. Ch. 83.  
 2 alk. 510 -

So if the bill seeks a discovery of the surface of particles.  
Mt. 146. 1. Rem. 98.

A discovery of surface of particles must show, who the proper  
particles are - or, indicated by name, for they might be in-  
definite, but they come out of discovery. Mt. 146.

Discovery has been allowed, for discovery of particles  
of surface of particles. Mt. 146. 2. Ch. 1. 197.

That the bill contains several matters of different nature,  
eg. surface of particles is sufficient cause of removal. It  
tends to discover and definite particles, and  
of them being also more to a part of the discovery.  
Mt. 146. 7. Rem. 146. 450. Ch. 1. 197.

So if the bill contains the surface of particles of the surface,  
between the particles to prevent multiplicity of suits.  
Mt. 148.

Demurrer to Discovery.

In a bill praying relief, as well a discovery the latter being merely in aid of the former, is, in general, incidental to it. so the demurrer to the relief extends to the discovery also. Mut. 148 -

But as a discovery is sometimes sought without relief, it may be that relief in a bill praying relief may show a title to discovery? tho' not to relief? in which case a demurrer may hold to the relief and not as to the discovery - and vice versa. Mut. 148. 9.

When the bill prays relief, the discovery of material to the relief, being incidental to it, is a right to relief includes a right to the discovery unless something in the situation renders it improper. Mut. 149. 50.

That in a bill not for money payable, becoming so, relief must show a case in which the same would be imposed for the mere purpose of compelling a discovery. Mut. 150.



Proceeds suit in aid of the jurisdiction of another court  
to enable plff. to prosecute in super -

But if the proceedings in another court be not pendente  
litte, a demurrer to the bill will hold. See Demurrer  
or information in W. C. Tit. 130. 2 W. C. 348 -

So, if the suit of pendente litte in which the suit  
is pending, can itself compel a discovery. Tit. 130. 1  
1 Ch. 288. 1 W. C. 205. 2 So. 451. Ex. action of Account  
Count -

That plff. have an interest in the subject - a mere equity  
or estate born to a discovery from bill is suff  
ground of demurrer. Ex. Bill pro discovery  
to be used in a suit to relieve at Law, but  
not in a case in which it is clear action at Law  
will not lie. Tit. 101. 222. 1 Ch. 36. 44. -

But if he has no interest, nor claim to the subject  
is a ground of removal. Mt. 120. 3. 2 Perm. 380 2. 2. 390.  
1. 220. 326. 3. 11. 311. The object is not but the  
removal of a party not in int. cannot be made  
ag't him in interest.

Want of priority of title between gift and will is  
a ground of removal. 1. 220. Ex. Legatus  
being testator's residue.

But the object sought is not material, is a  
ground of removal. Ex. If he does not show that  
the discovery will apply to his will. If he does not  
show a suit pending - or a course of litigation.  
Mt. 154. 5. Finch 214. 2. 120. 395. 399. 2. 120. 388. 1. Perm. 204.

But in general if it can be shown that the discovery  
may be in any way material to the subject of  
a suit. It will be removed. Mt. 156  
1. 220.

The intention of the deft. may be a ground of convic-  
tion if the quere. may establish it to a probability &  
certainty, or strongly a little equal in eq. to prob.  
 Tho' not perfect at law. Nit. 157. 102. 2 Rev. 245.  
 1 Eq. Cas. No. 151. 10. —

2d gr. If called upon to swear conscience cont  
Nit. 157. 8. 1 Rev. 246. 2 St. 481. 1 Arch. 450. 2 St. 593. Em. 75.  
 3 C. 11. 576.

2d gr. If deft. swears conscience cont the prob. and ex-  
actly means it in his bill; deft. is compel'd to  
make it swear. Nit. 158. 1 Rev. 60. — If deft. by  
his own consc. is bound to a payment in nature  
of a penalty in the event of his doing a particular act.  
Nit. 159. And if deft. has consented not to plead  
a consc. to the quere. he is bound by it, per alieu  
notwithstanding. Nit. 160. 1 Eq. Cas. No. 151. 8.

If deft. is not bound to swear conscience cont may tend  
to show him guilty of some moral injustice; as the  
birth of a bastard child. Nit. 160. vid. 2 Rev. 481. —

Now when the attorney may subject him to a  
perpetuity of suit & whether a license has been  
granted without license. - Tit. 160. 1 Res. 56. 2 20th 392.  
 2 Res. 265. 1 Cap. Cas. 131 -

License of jolly alone is entitled to the perpetuity  
 and waives it by bill. Tit. 161. 1 Res. 56. 2. 20th 395 -

But not bound to make discovery which would subject  
 him to any thing in the course of a perpetuity -  
 Ex. In Case whether he was educated a peasant  
 Tit. 161. 3 20th. 437.

If def. has an equitable title, equal to plffe tho' not  
perfect at law, he is not bound to discover the defect  
 in it - If the fact so appears in the bill; dem. will  
 hold. Tit. 162. 2 Res. 450. -

On a bill for discovery for discovery only, some grounds  
 of dem. which would extend as well to discovery or relief  
 in a bill praying relief will not hold. Thus dem.  
 for recovery of possession will not hold to bill praying  
discovery only - for it seeks no discovery - nor in general  
 for recovery of possession in the case; for some reasons, now  
 because the bill extends the discovery sought to part  
 of the controversy only - Tit. 163 -

secondly - Dem. to bills not original - D. bills in  
the nature of original

any of the rules given under the former general  
division, will apply to this - Art 103-4-

If a supplemental bill is bred where the original  
might be perfected by amendment; the bill held  
Art. 103. 3. 10th. 87-

Dem. to a bill will not hold for want of obj. if  
it is brought into Act by the original bill.  
and a single bill is generally a matter of defence.  
Art. 103. 3. 10th. 812 -

When a bill is in the form of a bill of amend. it is  
a ground of demand. Art. 103. 3. 10th. 509. Part 56 -

Dem. to a bill by amend. is a ground of demand -  
This is not the case - Art. 170 -

If a def. answers to any part of a bill, to which he has  
responded; he waives the benefit of the command - so if  
he pleads de For the same reason de cannot object, that  
def. shall answer de and to the reverse of plea, p[er]t[er]  
may obj[ect] and produce testimony - and thus proceed  
to a hearing. Mil. 171. 2 C. W. 79. 2 Ch. 137. 282 -

Regularly, &c - answered to the whole bill has been  
allowed, there can be no amendment. Mil. 174. 18 -

But after answers allowed to part of a bill, the  
whole may be amended. For here the suit continues  
in court. Mil. 174 -

To answer upon matter of form, the answer is no  
bar to a new bill - some of the points have been decided  
upon it. Mil. 174-5. 2 Ch. 138. 1/2 Hon. 155. 417. 441.  
2 B. 120 -

When the bill itself does not involve the whole of a case,  
which if fully concluded, set against a verdict, a def.  
must resort to a plea in which he may allege what

179. See Bill. Act. 178. 178.

To in many cases where sometimes a good defence by way of plea, could be a good ground of amendment if it appeared in the bill. Act. 178. Sec. 178. 226.

II. Of Pleas - First to original bills - Secondly to other bills. - Act. 178.

First - To original bills - These are of two kinds: 1. Pleas to relief - 2. To Discovery - Act. 178.

1. To Relief -

When the objection to the bill is not apparent in the bill, the bill must, if it would take effect, show to the court the plea or answer, the particular matter which creates the objection - Act. 177.

A plea is a set of general answers, to the charges, which come in point - The defence that which is proposed for a plea must be such, as returns the answer in a point of fact to a single point - If it answers a variety of circumstances, a general answer, it should be made by way of answer. Act. 177. 204-5. Sec. 178. 178. 24. In C. the hearing, is with a view to the propriety of a plea, i. e. what plea to answer.

Pleas of 3 sorts - 1<sup>st</sup> To the jurisdiction - 2<sup>nd</sup> To the person of plaintiff or defendant - 3<sup>rd</sup> In bar of the suit. Tit. 17-8.

The objections which may be made by plea, to the relief prayed, are merely, tho' not precisely the same as those, which are the subject of removal when the ground of objection is apparent on the bill. Tit. 17-8.

The formal objections proper to be made by plea are the following -

1<sup>st</sup> That the subject of the suit is not within the jurisdiction of a court i.e. any court of equity - this is called a plea not to the jurisdiction but in bar, because it does not deny the particular cognizance of the particular court of equity, applied to, but that the principles of equity extend to the same. Tit. 17-8. 2. 182-1. It goes to the merits -

2<sup>nd</sup> That some other court of equity has the proper jurisdiction - this is a plea to the jurisdiction - Tit. 17-8. 2. 182. 4. 203. 7. 204. 89. 218



3<sup>rd</sup> - That fact is disabled to con, by reason of personal  
 disability - Ex. extremity - slowness, attention &c -  
 Mt. 178. 180. 1. item 181. Sec L. 184. 2. Ch 399. 1. Sec 31 -  
 This is called a plea in law of a plea in substant  
 - Mt. 179. 183 -

4. That fact is not the fact he intends to be; or does  
 not contain the elements which he intends - Ex. that  
 he is not a man - Mt. 178. 185. 9. 1. item 470 -  
 This is called a plea in law - Mt. 179 -

5. That fact has no interest in the subject - Mt. 178. 185. 22  
 This also is a plea in law - Sec 179. 183. 2. Ch 399 -  
 It extends so well to divorce as to will - Mt. 191 -

6<sup>th</sup> - That fact is not likely to be called a fact, touching  
 the subject in question; as when there is a question of  
proximity of title between two part ies - Mt. 178. 7. 179 -  
 This is a plea in law also - - - - - Sec 177 -

7<sup>th</sup> That deft is not the person he is alleged to be  
or does not oustain the charges, in which he is sued.

Tit. 192.

This is a plea to the person of defendant. Ib. 179—

8. That deft has not such an interest in the subject  
as to under him liable to proce. demand. Plead  
in bed. Tit. 193. 1 Ves. 426. But generally in  
such cases a disclaimer is proper. Ib. 193—

9. That for some reason, precluded in the substance  
the case plea is not admitted to the trial ground.  
A plea is bad. Tit. 179. 194. Ex. gr. a procurator  
or order of the court by which the rights of the parties  
are determined. 2 W. 596.

Of Pleas cont<sup>d</sup>

On that is the bill for same cause has been assigned  
Nil. 194. 1. Rem. 200.

But the same or other plea, must be a final one  
as it is no bar. Nil. 195. & Nil. 457.

and so much of the former proceedings must be set  
forth, as to show, that the same point was then in issue  
Nil. 195. & Nil. 608. & Nil. 577.

An order stopping a former bill for same cause, may  
be obtained in bar, only when the court has determined  
that the bill had no title to the relief prayed. of course,  
a demand for want of plea is no bar. Nil. 195  
& Nil. 577. & Rem. 210. & Rem. P. C. 281.

A decision of another court of equity, determining the  
rights in question, is a good plea in bar. Nil. 197. & Rem.  
211. 284.

A conclusion est passing in the same or another court  
of equity, for the same cause, is a good plea, when this  
has been heard. Nil. 197. 8. & Nil. 287. 290.

and receive that the former suit be taken for the  
 the same parties, as the latter. Ex. A. plff. v. the part  
 of the prop<sup>r</sup>. pending the suit, to be who ever for  
 the part - Dec. of the first suit pending will hold.  
 Nit. 199. 1 Eq. Cas. 415-59 -

It, when a bill is filed in a ship file - bill agt  
 the captain for an acct. - and all the owners join  
 in a new bill. But in such case, priority is  
 to discharge the first, and to direct debt. to answer  
 to the second, as costs paid. Nit. 199. 1 Ch. Cas. 241 -

But when a second bill is filed by the same parties,  
 for the same purpose, but in a diff. right, the  
 precedence of the first is not a good plea. Ex. and  
 case in ex. when he is not ext. then takes out  
 administration and case is dismissed. Nit. 199.  
 2 with. 44 -

If plff. have a suit pending agt. def. for some cause,  
 at law, law, still after answer put in, may be  
 application to the court to set aside the bill, as it  
 will be granted, but the practice of the court at law  
 is not, the result in the case Nit. 200. 2 R. 102

But the judgment of a court of ordinary jurisdiction, determining the rights of the parties, is, in general, a good plea in bar of a bill in equity for same cause. *Mil. 205. 1 Burr. 477. 3 Binn. 270. 4 P. W. 207. 2 N. 255.*

Plea of non rect status is good in bar of a bill for non rect but it must show the balance. *Mil. 205. 1 Burr. 150. 2 W. 1. 3 W. 205.*

An release may be pleaded in bar of a bill, at law - but it is said, that a plea of release must state the cause of action upon which it was made. *Mil. 207. 3 L. R. 315. 2 Burr. 107. Hawk. 153. 3 Burr. 6. 555.*

The statute of process - in certain instances, the Statute of Limitations - and other acts may be pleaded in bar, as well in Chancery as at Law. *Mil. 210. 254. 3 W. 100. See - 6 W. 402. 533. 4 P. W. 207. 3 P. W. 307. 2 W. 275 -*

That one has a legal claim to the production of a writ  
 of certiorari to remove his property or title has not  
 just his title is a good plea in law - the purchase  
 of land, without notice of the writ. 11 C. 2. 5. 3. 4. 5. 6.  
630. 2 Vent. 331. 3 P. W. 231. 1 P. W. 246.

The involvement of the title to remove the property  
 of real estate, may be objected to by force this  
 objection is usually grounded on the want of proper  
notice. 11 C. 2. 5. 3. 4. 5. 6. 110. 2. 3. 4. 5. 6.

## 2. Of Pleas to Discovery only.

1. - That the ca is not such as to entitle the court  
 of equity to refuse a provision to compel a discovery.  
11 C. 2. 222.

If the case arises upon the fact of the title, to be  
 of this nature, and not otherwise.  
11 C. 2. 222.

2. That the bill has no interest - or not such as entitles  
 to reversal - if this fact appears; reversal will be had  
 Art. 222.5. For plea, that the bill being no bill or  
repealed, is not void -

3. If the bill has no interest in the subject (the onus is  
 in law is alleged in the bill) he may plead himself  
pleading the fact - or by repeal - Art. 223, & the 225.

4. If the repeal of the bill renders it void for  
 to compel a reversal; he may plead a repeal  
 by plea - Art. 223-4 & the 226, & the 14 - If the fact is  
apparent on the bill; he may plead Art. 107. repeal  
the bill plead 2

• the case in which the plea is proper, are;  
 1. When the accused may be subject to punishment  
 of any kind. If then the accused might be liable to  
 punish a crime about which he is not bound to answer,  
 and if the fact is not apparent, he should plead it.  
 Mit. 224. 1 Esp. 110. 2 Wils. 245. — Ex. Will for  
 recovery of a marriage, which if discovered would  
 prove the guilt of incest, or bigamy. — 5. Don. P. C. 65  
 2. R. W. 3-5. 1 Wils. 50 —

2. When the accused cannot be charged with the  
 perfection of the crime. — Ex. Will for life insurance with  
 benefit. — Mit. 160. 226. 1 Wils. 226. 228. 1 Esp. 110. 117.  
 2. Wils. 245. — It is so explained on the bill, Remer.  
 will hold. Mit. 160 —

But still in such cases it is preferable to the account  
 of no other fact than that which would occasion  
 the perfection. Thus in last instance the fact  
 is said not to hold, as to the act of life being  
sent for life, but as to the perfection only. 2 Wils. 107.  
 — 22. 226. 7 —



And in case of perfection, if plff. alone is entitled to the benefit of it, and waives it by his bill, def. is bound to make the discovery. Mt. 227. Mos. 278 -

3. If the secret sought is a fact, the discovery of which can be acquired from the confidance reposed in him, a counsel, att. or arbitrator; he may waive a discovery by pleading, that his knowledge was so obtained. Mt. 227. 3. 1 Ch. Cr. 277.

4<sup>th</sup> That def. is - prohibited from a reliable communication without notice of plff. ill. is a good plea to avoid a discovery of his title. Ex. gr. Parshara in the case of murder, the deceased being secret. - Provision of grants of a bankrupt, before he commences, and before notice of the bankruptcy. Mt. 288. 152. 17 Pen 27.  
2 Mos. 150. -

Continued Words of discovery. Mt. 29. 288. -

of the nature of the several modes of defence cont.  
 of Pleas - cont.<sup>d</sup>

Secondly - Pleas to Bills other than original.  
 Name of the former is original bills, already  
 enumerated, and held to the other kinds of Bills,  
 according to their respective natures; and some  
 of the latter sort of pleas, which do not hold  
 to original bills. Tit. 228.

If a bill of amendment is laid without sufficient cause  
 and this is not apparent, it may show it by plea.  
 So, if the plea is not the proper plea. Tit. 228. 9.  
 2 P. M. 248 -

If a supplemental bill is laid about matters not  
 done before the original bill passed, and this is not  
~~shown~~ it, it may plead it. Tit. 229. 230 -

The original bill is not liable to any plea, and will not hold to any original bill - in nature of an original bill. Tit. 230-

It is not liable to plea to the jurisdiction of the court, nor to plea to the person of plaintiff - unless exhibited in the name of some defendant, who cannot sue alone; as an infant, fool, mad, or lunatic. The plaintiff in the original bill, has submitted to the jurisdiction and obliged the defendant to defend. Tit. 230-

In pleading there must be generally the same substance as to substance, at least in equity, as at law. Tit. 232  
2. Tit. 232 -

If a plea is not intended to cover the whole bill, it must express to what part it extends. Tit. 232.  
3. Tit. 232. Mass. 40. 2. Tit. 108 -

It seems that a plea ought not to contain more than one response - Double plea informal & improper.

Mit. 223. s. 1 P. 11. - 20. 3 2<sup>th</sup> 341. -

But a plea may be allowed in part and over-ruled in part - i.e. it may be allowed as to part of the bill covered by it, and over-ruled as to the rest -

Mit. 223. s. 1 2<sup>th</sup> 22. 2 P. 54. 150. 284. 3 P. 587. 1<sup>st</sup> 22. 222 -  
see also replevin. 2 1<sup>th</sup> 284.

The verdict ought in genl to be positive, as at law, exception in certain cases - Ex. That an act pleaded in jud, according to the best of his knowledge and belief, so in cases of negative verdicts, and verdicts of facts not within his knowledge immediately. Mit. 222. s. 3 2<sup>th</sup> 70.

If answer pleads must be clearly and distinctly  
averred. M.C. 285. Gilt. Ch. 87

If the bill contains any charge which being averred  
covered, would defeat the effect of the defence matter  
alleged in the plea, the charge must be averred  
not only by the plea, but by renewed plea. In this  
case the answer is not merely to encompass the plea.  
It is not a general answer, constituting a distinct  
response - M.C. 286-7. 239. 242. 3 Gilt. 304. 815. 3 P. W. 145  
3 P. W. P. C. 373. 374. 2 Gilt. 241 - M.C. covered in new  
Practice -

2.  
But if the plea is encompassed by answer to any  
part of the bill covered by the plea (i.e. to any  
part of which the plea is an avowance) it aver  
- rules the plea. M.C. 237-8. 284. 14. 2 Gilt. 153. 2 P. W.  
P. C. 20-1 -

Or, if neither party wishes to try its sufficiency  
in the first instance; plff. may take issue upon  
it, without a decision upon its sufficiency. Nil. sup.

As to the effect of allowing a plea simple  
allowance reserving the benefit of it to the pleading  
and ordering it to stand for an answer,  
(see Nil. 230. 243 -

Plff. by objection to the plea, admits its truth?  
If therefore he takes issue upon it, and disproves  
it true; the verdict, so far as the plea  
extends, is barred, tho' the plea itself is not good.  
Nil. 240-1. 3 Wm. P. C. 74. 3 P. W. 94. 98 - -

(17). Answers and Disclaimers.

If a pledge is conceded, it may be on the same  
matter by issue of answer. Mit. 244. C. 11. 95. 2 Bro. 572.  
1 alk. 500.

And return part of the bill is not avoided by demurrer  
in plea, unless be expressed by express impugn defendant  
exceptions. Mit. 244.

The plea in the bill is admitted in answer of affidavit  
to be conceded by conceding of return, and it be not  
not pleaded in answer of the bill, in plea, he may  
still, in the answer, assert that he is not bound to  
make discovery. Mit. 244. C. 11. 95. 2 Bro. 571. 5 alk. 277.

In this case plea may exist to the return, and answer  
and upon this return it will not be admitted, unless  
the plea is expressed to conceding of return. Mit. 245.

If several distinct grounds of appeal, not in bar, exist; left should state them by way of recital instead of plea; and may have the same adv. of them as if pleaded in bar, Nit. 243. 6. 17th. 54.  
 2 P. 98. 145.

To so much of the Title, as is material, left must answer directly; he must confess or deny the substance of each charge. Nit. 245-7-

Indemnity and pledge charges, and the assumpsit prohibition, and quarrel, Nit. 247. 2. 17th. 54.

If the answer states any thing not material to the left case, it will be objectionable to the end be expressed - as if any thing expressed, but nothing substantive is essence material, Nit. 247. 11th. 54. Nit. 248. 11th. 54.



The answer is made by a committee of all  
experts to the bill - It then gives particular answers  
to the several charges, amounting to a series of them, in  
a separate of them with some matter, by way of evidence  
or both. Art. 249 -

The conclusion with a general appeal of all the matter  
contained in the bill - This is upon facts and a board  
of the whole, before answered, in a general. Art. 249 -  
§ 17. 80 -

The answer is in regard, the answer is expected to be  
by the committee - In this case the committee give  
answers to the bill and the several charges, in the  
conclusion, are omitted - For it is entitled to the  
benefit of every objection, of course, and the answer  
cannot be expected to be insufficient. Art. 250 -

The manner of an order or benefit is expected  
to be by his committee, or by the power appointing  
his guardian by the court. Art. 280.

Provision signed by any will exists when taken  
by any will. Art. 280.

If def. appears the manner to be indefinite  
i. e. not full and explicit: he may object to dis-  
tancing such parts of the will, as he conceives are  
not covered, and praying, that def. may, as  
to those parts, make a part covered. Art. 280.

It further shall be the case in any case  
in a part of the will, and in any case in  
any part of the will, in any part of the will to the  
will. Art. 280 & 281.

The title may be disclosed all right and left of the subject  
 or to any part of it. But is disclosed, and hence  
 to stand without an assent: As a disclosure is not  
 a revelation of present interest. That left may conclude but  
 an interest and subject of it; and an assent is  
 generally necessary, as far as to conclude this last.  
 Art. 253. —

The form of disclosure is, that disclosure all right  
and left to the subject disclosure. Art. 254. —

The disclosure may be of any right and the right with  
in general or disclosure and left, subject the bill disclosure  
 Art. 254. & 255. 259.

Diff. may conclude to any part of the bill - passed to another  
 or passed to another - and disclosure or to another. That  
 there may, disclosure, disclosure to disclosure and disclosure  
disclosure of the bill - In the subject disclosure to what it has  
disclosure to, and disclosure any disclosure to which he has disclosure  
disclosure - the disclosure disclosure disclosure, whether  
 he disclosure disclosure any disclosure, and the disclosure  
 whether he disclosure disclosure any disclosure - & disclosure

claim, by answer, what he has now disclosed. - Mt. 254.  
2<sup>d</sup> No. C. C. 20-1 -

A plea in answer, then succeeds a demand - and  
in answer a plea - Mt. 254 -

### Replications.

A replication is plea to a plea in answer.  
Mt. 255 -

Formally it was usual for plea to answer to be  
to special matter alleged in the plea in answer;  
and for that it was usual to have the plea in  
answer verbal. - Mt. 255 -

The consequence of this practice, was, frequently, a  
long train of cross pleadings, which were found  
inconvenient in the proceedings - Mt. 255.6. times 284 -

The parties do now object. Several applications are on  
 it, and one of them is to be referred according to the  
 form of the bill, whether new matter, &c. may have  
 alleged. H. 285. H. 284. 5. 1 (H. 285) -

one of the parties has now moved in the House, &c.  
 that the bill is not properly amended to his own  
 mind, and to the bill, these amendments, &c. may make  
 new matter. H. 285. H. 285 -

The general objection now is not so that the bill is  
 too certain, and sufficient and that the plea is "entire  
 uncertain and insufficient." H. 285. 6 -

The bill does not apply at all, the plea is moved in order  
 to be law H. 285. 4 -



















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